

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

:

:

v.

:

C.A. No. T14-0058

:

14001527518

MISHQUAMATOKQS FAYERWEATHER :

DECISION

PER CURIAM: Before this Panel on November 19, 2014— Judge Almeida (Chair), Administrative Magistrate Cruise, and Magistrate Goulart, sitting—is Mishquamatokqs Fayerweather’s (Appellant) appeal from a decision of Magistrate Abbate (trial magistrate), sustaining the charged violations of G.L. 1956 § 31-8-1, “Operation of vehicles without evidences of registration” and § 31-47-9, “Penalties – owner operating without insurance.” The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On August 2, 2014, Trooper Vasconcelos of the Rhode Island State Police (Trooper), charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on September 10, 2014.

At trial, the Trooper testified that he was travelling southbound on Valley Street, and that while on patrol, he observed a tan Pontiac with Rhode Island registration 671-583. (Tr. at 5.) When the Trooper checked the registration number with the Department of Motor Vehicles data base, a different vehicle was described. Id. Thereafter, the Trooper initiated a motor vehicle stop and identified the driver as the Appellant by his license number. Id. The Trooper then testified that Appellant was unable to provide paperwork for the vehicle’s registration and

insurance. (Tr. at 6.) Consequently, the Trooper cited Appellant for “operation without evidence of registration” and “operation without evidence of insurance.” Id.

Next, Appellant testified that he believed Rhode Island law allowed drivers two days from the date of purchase to register a vehicle. (Tr. at 7.) Thereafter, Appellant offered the vehicle’s bill of sale and previous registration as Exhibits 1 and 2. (Tr. at 6-7.) Subsequently, the trial magistrate asked Appellant the name of the current vehicle owner. (Tr. at 8.) The Appellant explained that on the day of the traffic stop, Lina Rojas (Ms. Rojas) owned the vehicle. Id. Ms. Rojas had recently purchased the vehicle from Ellenor Mello (Ms. Mello). Id. The Appellant explained that since Ms. Rojas had recently purchased the vehicle, she had not registered it at the time of the stop. Id. The Appellant further testified that Ms. Rojas has since sold the vehicle, thus, he does not know the current owner. Id.

After hearing testimony from the Trooper and Appellant, the trial magistrate found that the Trooper stopped Appellant during a motor vehicle stop on August 2, 2014. (Tr. at 10.) During the stop, Appellant was unable to produce the registration and insurance information for the vehicle. Id. Based on the testimony of the Trooper, the trial magistrate found Appellant was in violation of operating a motor vehicle without registration and insurance. Id. The trial magistrate also took notice that the Appellant had a previous violation of no proof of insurance from January 16, 2013. (Tr. at 13.) Thereafter, the trial magistrate imposed a mandatory sentence of license suspension for three months, a fine of \$300, and court costs. (Tr. at 14.) Aggrieved by the trial magistrate’s decision, Appellant timely filed this appeal.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Ins. Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). "The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Envtl. Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision." Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial magistrate's decision is clearly erroneous in light of the reliable, probative, and substantial evidence on the record. Specifically, the Appellant argues that the trial judge made an error of law when he sustained the violation of § 31-47-9 "Penalties – owner operating without insurance," because it was not established at trial that he knowingly operated the vehicle without insurance as required by §31-47-9.

Section 31-47-9 states in relevant part,

"any . . . person who shall operate in this state any motor vehicle registered in this state with the knowledge that the owner of it does not have in full force and effect financial security . . . may be subject to a mandatory suspension of license and registration." (Emphasis added.)

In the instant matter, the record is devoid of evidence to indicate that the Appellant was operating the vehicle with knowledge that the owner did not have insurance on the vehicle. See id. In rendering his decision in regards to the insurance charge, the trial magistrate stated that Appellant failed to provide insurance documentation. (Tr. at 10.) This finding by the trial magistrate lacks the requisite element of knowledge to sustain the charge. See § 31-47-9. Therefore, after a review of the entire record, it is the finding of this Panel that the trial judge made an error of law when he sustained the violation of § 31-47-9 without reliable, probative, and substantial evidence on the record that the Appellant had knowledge that the vehicle was uninsured. See Albanese v. Providence Police Department, 711 A.2d 651, 652 (R.I. 1998) (holding that the State had to prove by clear and convincing evidence that the driver knew his car was uninsured to be in violation of § 31-47-9); see also Augusto Tiguila v. Rhode Island Traffic Tribunal, A.A. No. 05-04 Summons No. 01-0010129239 and State of Rhode Island v. Gilbert Dalomba, A.A. 05-43 Summons No. 01-

001-103833. Accordingly, because the element of knowledge was not established as required by § 31-47-9, the Appellant's appeal is granted on the insurance charge, and the charge is dismissed.

Having reviewed the record in its entirety, it is clear that there was sufficient evidence presented by the Trooper to satisfy the elements of the expiration of registration charge. Rhode Island General Law states that “[n]o person shall operate . . . upon any highway . . . any vehicle required to be registered pursuant to this title unless there has been issued for it a valid registration card and unless there is attached to it and displayed on it . . . a valid registration plate.” Sec. 31-8-1. Under Rhode Island General Law § 37-8-1 it is a violation in Rhode Island for a driver to operate a vehicle without registration. See id.

The trial magistrate specifically found in rendering his decision that the vehicle driven by the Appellant was unregistered after the Trooper checked the status of the vehicle in his computer system and the registration plates did not belong to the vehicle Appellant was driving. (Tr. at 10.) Based on the testimony provided by the Trooper to the trial magistrate, the members of this Panel find that the trial magistrate’s decision on the registration violation was not an abuse of his discretion nor did he make any errors of law.

Conclusion

After a review of the record and the oral arguments presented to this Court, this Panel finds that trial magistrate did not abuse his discretion or make any errors of law when he sustained the violation of § 31-8-1, "Operation of vehicles without evidences of registration." Therefore, this Panel denies the Appellant's appeal as to the aforementioned violation. However, because the State did not prove that the Appellant was driving his vehicle with knowledge that the vehicle was uninsured, this Panel grants the Appellant's appeal and dismisses the penalties for violating § 31-47-9, "Penalties – owner operating without insurance." Accordingly, this Panel denies the Appellant's appeal in part and grants the Appellant's appeal in part.

ENTERED:

Judge Lillian M. Almeida (Chair)

Magistrate Alan R. Goulart

DATE: _____

Note: Administrative Magistrate R. David Cruise participated in the decision but resigned prior to its publication.